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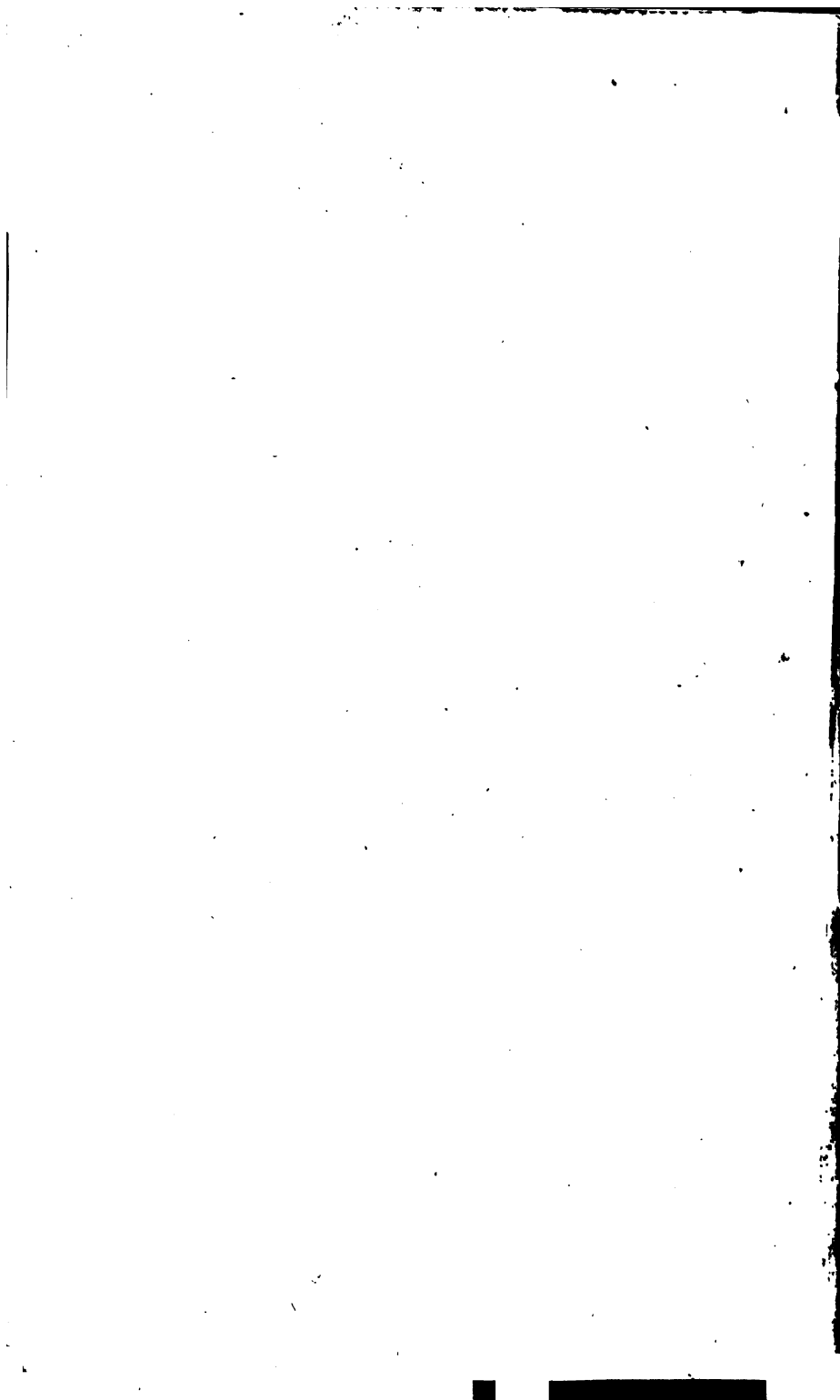
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A  
TREATISE  
ON THE  
Laws of ENGLAND, &c.

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A  
T R E A T I S E  
O N T H E  
L a w s o f E N G L A N D ;

C O N C E R N I N G

Eſtates in Lands, Advowſons, or Hereditaments, of what Kind ſoever; adviſing Perſons intereſted therein, either as Purchaſers, Mortgagees, or otherwiſe, — as well as Conveyancers, what Methods are proper to be uſed in Relation to the Security of Titles to ſuch Eſtates:

With ſome Obſervations on the

L A W S o f B A N K R U P T C Y .

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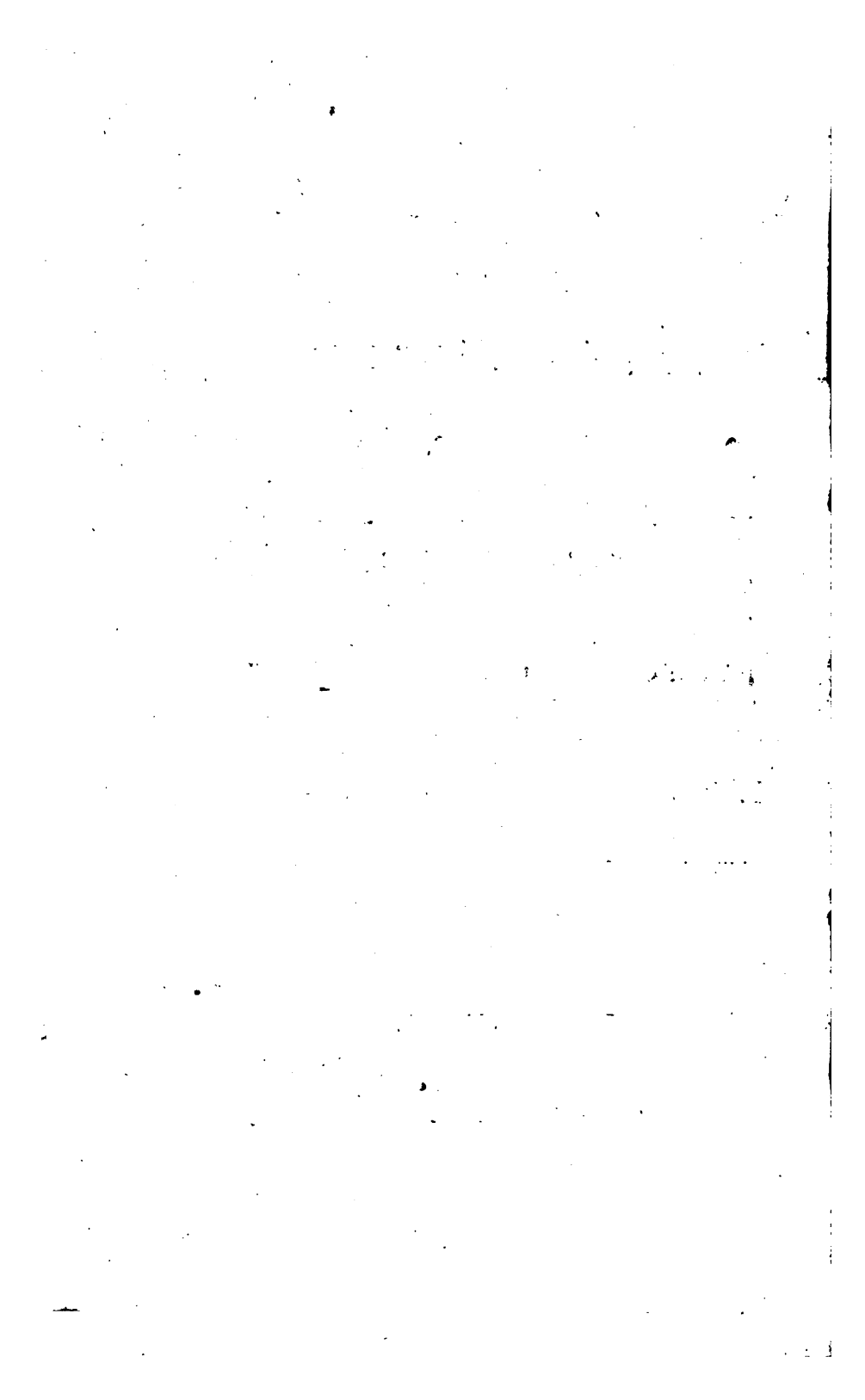
By H E N R Y C O L L E T, Eſq;  
Barriſter at Law.

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1754



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A  
TREATISE  
ON  
Titles to Land Estates, &c.

**I**T hath been for a long Time a general and just Complaint, that, as the Laws of *England* are now circumstanced, it is impossible, in many Instances, to guard against Frauds, used by Persons who are willing to be dishonest in selling or mortgaging their Estates in Lands and Hereditaments, through the Concealment, Suppressien and Forgery of Titles thereto; and even in some Cases you cannot be secure in purchasing or lending Money on such Estates, if you have those of fair Character to deal with, from the Secrecy of Transactions concerning them; for it may not always be in the Power of such Persons to discover every Deed, Contract, &c. in Being relative thereto, which may alter or affect the Nature of the Estate you are treating about; on which Accounts the whole Fortunes of a great Number of Families have been lost, and Purchasers and Mortgagees, as well as others interested in these Estates by Settlement, Grant, Devise,

B

or

or otherwise, have been unjustly deprived of them, and almost endless Law Suits introduced.

One chief End of the Laws of a well regulated Government, is to secure as much as possible the Property of the People who live under them; for the industrious Merchant, when he has by long Labour and Pains, and after several Risques, acquired a considerable Substance in Money, and indeed all other Persons who have Money to lay out, must be greatly discouraged if they cannot dispose of their Money in Lands with Security, and safely settle Provisions thereout for the different Branches of their Families; the want of such Security must of Necessity be a great Hindrance to the Circulation of these Estates; and Property in general; therefore any Defect in the Laws of a Country, of this extensive Nature, ought, if it possibly can, to be remedied. It must be confessed that to have Laws provided for the Protection of Property even of the lowest Kind, for the Preservation of which our Laws are in most Cases very well calculated, is undoubtedly of publick Utility; but that the minutest Concerns should be well guarded by the Laws, and severe Punishments inflicted on Persons infringing them, and at the same Time proper Regulations be wanted to preserve and secure Titles to the largest

largest Estates in Land, is a Deficiency which, as far as it reasonably may be, should be supplied.

That proper Security is not to be had in Purchases or Mortgages of such Estates, as our Laws now are, is well known to the most able Conveyancers from their Experience, and too often sadly felt by Purchasers and Lenders of Money on Land Security, who have paid away or lent their Money on bad Titles; for though the Person employed by them to look into the Title of such Estate, and draw or direct the proper Conveyances, and every Thing which may be thought necessary to complete the Purchase or Mortgage, be thoroughly skilled in every Part of his Business, it is impossible for him to guard entirely against the Frauds of a Seller or Mortgagor, or be ever sure that a Title is clear, whether any Fraud be used or no, as some Deed, Will, or other Instrument, &c. affecting the Estates contracted for may be undiscovered, either through Design, or even sometimes for want of such Seller's or Mortgagor's knowing of such Deed, &c. which may very commonly happen. How then is it possible for a Lawyer to judge what Incumbrances an Estate is subject to? How often it hath been mortgaged? What Things it stands

charged with or are granted out of it, without some Method can be found out of discovering the Deeds, &c. creating such Incumbrances or Charges, which now may be and often are concealed? Indeed what Statutes such Estate is liable to, and what Judgments, Executions, Recognizances, Decrees, Fines or Recoveries affect it, may be known by searching at proper Offices; but suppose a Settlement made prior, or even subsequent to a Marriage, on valuable Consideration, should be concealed, or a Will of a Father, or any other Ancestor or Person should be secreted, as such Will may easily be, for Wills devising Lands are often not proved, and a Person claiming Right should sell, mortgage, or otherwise charge the Fee of an Estate comprized in such Settlement or Will, which he might be well intitled to do if such Settlement or Will had never been made, tho' under them if produced it might appear that such Estate so sold, mortgaged or charged, was conveyed or devised to other Persons and Uses, and that the Person selling, mortgaging or charging the same, was perhaps only a mere Tenant for Life, without any Power either by Recovery or otherwise to bar the Remainders limited on such Estate, or perhaps that he had no Title at all. It may be answered, that in such Case the  
 Person

Person selling, mortgaging, or charging such Estate, is liable to make Satisfaction to the Purchaser, Mortgagee, &c. by his Covenants: This I own is true; but what Satisfaction can such Seller, &c. make, if he should become Insolvent, which may very often happen; perhaps in some Cases where such Sellers, &c. use wilful Frauds in the Disposition of their Estates, they may be punishable for such Frauds; but whether they are or no, it is but a poor Compensation to a Buyer, &c. who is to lose a large Sum of Money: Indeed if Punishments for such Frauds were more frequent and severe, it might prevent some Injuries to Purchasers, &c. But if they were to be inflicted in every Instance of such wilful Frauds, yet the Inconveniences I have mentioned would often happen; for the Loss is the same to a Purchaser, &c. whether it arises from a Deed or Instrument being fraudulently concealed, or from its remaining undiscovered on account of the Seller's or Mortgagor's not knowing that such Deed or Instrument was ever executed or in Being: And in a Multitude of Cases, not only Purchasers and Mortgagees, but others intitled under real Settlements made on valuable Consideration, Wills, &c. may be Losers by Reason of Concealments, Suppressions, and Forgeries of Deeds, &c. concerning

such Recovery had shall be in the King, bind the Heirs in Tail, whether any Voucher be had in such Recovery or not: But that after the Death of such Tenants in Tail, the Heirs in Tail may enter and enjoy the Lands according to the form of the Gift; the Recovery or any thing done or suffered by or against such Tenant in Tail notwithstanding; except that such Tenants in Tail may make Leases by Writing indented for twenty-one Years or three Lives, reserving the accustomable Rent. 34 & 35 H. 8. *cap.* 20. Neither doth a Fine levied by any Person of any Lands before the levying of the same Fine given to the Persons so levying the same, or their Ancestors in Tail by Letters Patent or Act of Parliament, the Reversion whereof at the Time of the Fines levied being in the King, his Heirs or Successors, bind the Heirs in Tail. 32 H. 8. *cap.* 36. Nor can any Deed or Conveyance executed in such Cases by such Tenants in Tail bind the Heirs in Tail: Neither can a Remainder in Tail limited on a Leasehold Estate for any Term of Years, for such Terms may be intailed, as hath been frequently determined, be destroyed by Fine or Recovery; for a Fine cannot be levied of such Leasehold Interests so as to conclude Strangers; for in Order to do that, a Freehold must be in the Cognizor

Wood's  
Inst. 242.  
5 Rep.  
124.

Wood's  
Inst.

nitor or Cognizee ; but it may be good between the Parties by way of Estoppel : A Fine may be levied by Tenant in Fee-simple, &c. for Years, or a Lease for Years be made by it ; but the Lessee for Years cannot levy a Fine of his Lease ; nor can a Recovery be suffered without an actual Tenant of the Freehold ; so that it is impossible by Fine, Recovery or any Conveyance, without the Consent of the Persons intitled to such Remainder, or a Freehold in the Estate, to bar or destroy it.

Where then can be the Security of a Purchaser or Mortgagee, when a Settlement, Will, &c. may be concealed, or unknown at the Time of the Sale or Mortgage, so that a considerable Time after such Purchase or Mortgage has been made, it may appear, That the Seller or Mortgagor could not by any Means either of Fine, Recovery, Feoffment, or otherwise howsoever, in the Instances abovementioned, destroy the Remainder limited on the Estate sold or mortgaged, or the prior Incumbrances thereon, or make a clear Title thereto ? Or as such Settlement, Will, &c. may be suppressed or forged, as well as concealed, How can not only Purchasers and Mortgagees, but others intitled under such Settlement, Will, &c. be ever secure of their Right, without a publick Method of discovering what

C                      Deeds,

Deeds, &c. have been made concerning such Estates.

What I would recommend as a Method which appears to me reasonable, to remedy in some degree the Injuries which Purchasers, Mortgagees and others who are intitled to Estates under any Settlement, Will, &c. often suffer through Concealments, Suppressions, and Forgery of Settlements, and other Deeds, Wills, &c. is in some respects different from any thing I have yet seen proposed on this Subject: It is not exactly of the same Nature with the Registers kept in the Counties of *York* and *Middlesex*; for some Objections have been made to having such Registers in every County; and there may be some Reasons against making so publick, what Incumbrances are charged on every one's Estate in Lands, &c. in the Manner those Registers do, as in some Cases it may injure the Credit of some particular Persons, or produce some other Inconvenience to them: Yet in those two populous Counties such Registry was thought absolutely Necessary for securing the Rights of Persons to these Estates under any Deed, Will, &c. which might be so forged, concealed or suppressed, and that Money might be laid out on Lands securely; and daily Experience shews the great Usefulness of them. Persons in those  
Counties

Counties are secure in their Estates, and dispose of their Money therein, without Danger of Losing it, or being involved in long and expensive Controversies, if the Conveyancer they employ thoroughly understands what is a good Title; and a Purchaser or Mortgagee of Lands in such Counties, not employing a Lawyer of Eminence in his Profession, can blame no one but himself if he should suffer any Loss; And such Estates in those two Counties, on account of the Security arising from Registering all Deeds, Judgments, &c. affecting them, are certainly worth some Years more Purchase than in any other County; for in no other County, as the Law now stands, for want of such Register, or something of that Kind, can any tolerable Security or Safety be had: If therefore any Scheme can be proposed which will have all the Advantages of the Register in those two Counties, and at the same Time be free from the Objections made to such Register, it would be of great Service to all Persons concerned in buying or lending Money on Estates in Lands and Hereditaments, and all Profits thereout, and others Grantees, Devisees, &c. of such Estates in other Counties. What my Thoughts are on this Head, I have offered at the End of this little Treatise, in a short Sketch of an Act which I

would with great Submission recommend; and which will come more properly after the Observations I shall make on those Parts of our Laws relating to fair Purchasers, Mortgagees of the Estates I have mentioned, and others, than if inserted here.

The Court of *Chancery*, in which to the great Happiness of the Kingdom at present presides a Lord Chancellor of the greatest Integrity, as well as Ability, does in every Instance give all possible Relief to fair Purchasers and Mortgagees, who have Purchased or lent their Money on Estates without Notice of prior Charges or Incumbrances; but if in all Cases Sales and Mortgages were to be confirmed, if fairly made on valuable Consideration, and without Notice (tho' there is some Nicety in knowing what amounts to a Notice or not) an Injury must be done to some one; for if such Purchases and Mortgages are at all Events to be made good, Persons entitled to such Estates in Remainder, who are often Purchasers on valuable Consideration, and those to whom prior *bona fide* Incumbrances have been made, must suffer; and if such Sales and Mortgages cannot be confirmed, as in some Cases they cannot possibly be, the subsequent fair Purchaser or Mortgagee must be a Loser, on a Supposition of what is too often Fact, the Vendor or Mortgagor's Insolvency.

Relief

See 2 Ven.

337.

1 Chan.

Ca. 20, 36,

149, 162,

166.

1 Vern.

187.

2 Vern.

457.

Relief is likewise often given in the Court of Chancery against prior Incumbrances, when subsequent Purchasers or Mortgagees have paid or lent their Money without Notice of them, if such Purchasers or Mortgagees have an Opportunity of buying in or taking an Assignment of even a satisfied Incumbrance, if prior in Point of Time to that under which any other Mortgage claims; and this is undoubtedly, as the Law now stands, the most equitable way of determining in such Cases; but still adequate Justice cannot be done to all Parties concerned, for some body must suffer in Case of the Insolvency of such Seller or Mortgagor.

There is also a Statute in 4 & 5 W. & M. cap. 16. which enacts, " That if any Person for any valuable Consideration shall acknowledge Judgment, Statute or Recognizance, and afterwards mortgage his Lands to a second Creditor, or in Trust for him, and shall not give Notice of the said Judgment, &c. under his Hand before the Execution of the Mortgage, unless such Mortgagor, upon Notice given by the Mortgagee under his Hand and Seal, attested by two Witnesses, of such former Judgment, &c. shall within six Months pay off, and cause the same to be vacated by Record; the Mortgagor

“ gor shall have no Remedy in Equity or  
 “ elsewhere for Redemption of the Lands  
 “ against the Mortgagee.” And it also  
 enacts, “ That if any Person who shall  
 “ mortgage Lands for Security of Money  
 “ due, or for other valuable Considera-  
 “ tion, and shall again mortgage the same  
 “ Lands to any other Person for valuable  
 “ Consideration, (the former Mortgage  
 “ being in Force) and, shall not discover  
 “ to the second Mortgagee the former  
 “ Mortgage under his Hand, the Mort-  
 “ gageor shall have no Equity of Redemp-  
 “ tion against the second Mortgagee; and  
 “ that if there be more than one Mort-  
 “ gage at the same Time of the same  
 “ Lands, the late or under Mortgagees  
 “ shall have Power to redeem any former  
 “ Mortgages; but nothing in this Act is  
 “ to bar any Widow of a Mortgageor of  
 “ her Dower, not legally joining with her  
 “ Husband in such Mortgage, or otherwise  
 “ lawfully barring herself from Dower.”

This Act is certainly much in Favour of  
 second and other subsequent Mortgagees,  
 but in several Cases may be far from mak-  
 ing them a proper Satisfaction, because  
 the Equity of Redemption to be forfeited  
 may fall very short of what a subsequent  
 Mortgagee advanced when the Principal  
 and Interest due to the first Mortgagee is  
 paid

paid off: And Frauds of this Kind are so commonly used by Mortgagors in distressed Circumstances, that Estates have been and often are mortgaged for ten Times as much as they are worth; and this every one who is much concerned about Mortgages often meets with; so that not only one, but several Mortgagees, may lose large Sums of Money if the Mortgagor should be insolvent.

There are in Favour of fair Purchasers and Creditors several other Statutes. In 13 *Eliz. cap. 5.* it is enacted, " That all  
 " Conveyances of Lands, or Goods, or  
 " Profits out of the same, and every Bond,  
 " Judgment and Execution to be had to  
 " the Intent to defraud Creditors or others,  
 " shall be only as against that Person  
 " whose Actions, &c. by such fraudulent  
 " Practices might be delayed or defrauded,  
 " of none Effect; and all Parties to such  
 " fraudulent Conveyances, Judgments, &c.  
 " and Persons privy to and knowing the  
 " same, and wittingly avowing them to  
 " be true, and those who alien or assign  
 " the Lands, Goods, &c. so to them con-  
 " veyed, are hereby punishable by Forfei-  
 " ture and Imprisonment." And in this  
 Act are Provisoes, " That common Reco-  
 " veries shall be of like Force as if this  
 " Act had not been made; and that this  
 " Act

" Act should not make void any Estate by  
 " reason whereof any Person shall use any  
 " Voucher in any Writ of Formedon, nor  
 " extend to any Estate or Interest in any  
 " Lands or Goods made upon good Con-  
 " sideration, and *bona fide*, to any Per-  
 " sons not having Notice of such Fraud."  
 This Law was made perpetual by 29 *Eliz.*  
*cap. 5.* The Statute of 27 *Eliz. cap. 4.*  
 enacts, " That all Conveyances, &c. of  
 " any Lands or Hereditaments, or any  
 " Estate or Interest thereof, with Intent  
 " to defraud Persons who have purchased,  
 " or shall purchase the same, shall be deem-  
 " ed (only as against that Person and others  
 " claiming under him who shall purchase  
 " the same for good Consideration) to be  
 " utterly void, and all Parties to such  
 " Conveyances, or Persons privy and  
 " knowing of the same, and wittingly  
 " avowing the same to be true, to the  
 " Disturbance of Purchasers or Lessors, are  
 " hereby punishable by Forfeiture and Im-  
 " prisonment. But this Act is not to de-  
 " feat any Conveyance made for good  
 " Consideration, and *bona fide*," and it  
 enacts, " That if any Person shall make  
 " a Conveyance or Limitation of any  
 " Lands, with any Clause of Revocation  
 " at his Pleasure, and after such Convey-  
 " ance shall sell, convey or charge the  
 " same

" same Lands for Money or other good  
 " Consideration, the said first Conveyance  
 " against the said Vendees shall be void;  
 " but no lawful Mortgage made *bona fide*  
 " on good Consideration shall be hereby  
 " impeached." The Remainder of this  
 Act relates to the Entry of Statutes Mer-  
 chant and of the Staple, so as to make  
 them binding on subsequent Purchasers.  
 This Act was made perpetual by 39 *Elix.*  
*cap. 18.*

The Statutes last-mentioned, so far as  
 they extend, are excellent Laws; but every  
 Lawyer must know that the Inconveni-  
 encies and Injuries I have stated, happen in  
 Cases where Conveyances are made without  
 the least Fraud: As for Instance, in the  
 above Case of Settlements before or after  
 Marriage on good and valuable Consider-  
 ations, limiting only to the Person selling  
 or mortgaging an Estate for Life (who per-  
 haps may be Heir at Law, or otherwise  
 well intitled to the Fee, if no such Settle-  
 ment had been made, though under it, as  
 I above observed, he may be only Tenant  
 for Life, or indeed have no Estate at all)  
 Remainder to Trustees to preserve contin-  
 gent Remainders; which Settlement may  
 be concealed from a Purchaser; and often  
 in the Case of Wills, an Heir at Law may  
 be only Tenant for Life of an Estate under  
 D a Will

a Will not shewn to the Purchaser, and another Person intitled to the Remainder or Reversion, and the Heir may (such Will being concealed) Sell or Mortgage the Fee-simple of such Estate, and become Insolvent; and when the Right of the Person intitled in Remainder or Reversion accrues, how is the Purchaser, &c. to avail himself? To such Settlements and Wills these Statutes do not extend; neither do they to defeat prior *bona fide* Incumbrances; and there are many other Cases of the same Nature, in which the Injuries I have mentioned may happen which these Acts do not reach. If Mortgagors and Sellers of such Estates, who should wilfully Sell the same, or make any subsequent Incumbrance thereon, without discovering to the subsequent Purchaser or Mortgagee all prior Charges and Incumbrances, if any such there should be, on the Estates by them Sold or Mortgaged, were to be subject to the Punishments inflicted by these Acts, as they are in every respect Guilty of as great Frauds as what are intended to be remedied by them, it might prevent some Injuries to fair Purchasers and Mortgagees, but would not in every Case; for some Deeds may remain secret without any Fraud; and it may not be in the Power of a Seller or Mortgagor to discover them; which Deeds may alter the

the Nature of the Estate contracted for, and be productive of the same Inconvenience as if they were fraudulently concealed. It is therefore absolutely Necessary that by some proper Means all Deeds, &c. binding such Estates should be discoverable.

There is a Statute in 3 *W. & M. c.* 14. against fraudulent Devises, which Enacts,  
 “ That where Persons having Power to  
 “ devise, dispose of, or make Appointments  
 “ of Lands and Tenements, or any Profit  
 “ thereout, shall dispose of the same by  
 “ their Wills, such Wills, Dispositions or  
 “ Appointments, shall be deemed (only as  
 “ against Creditors by Bond, or Specialty  
 “ binding the Heir) to be fraudulent and  
 “ void ; and such Creditors are to sue the  
 “ Heir and Devisees jointly ; and such De-  
 “ visees shall be liable in the same Manner  
 “ for a false Plea, as any Heir should have  
 “ been for not Confessing the Lands to  
 “ him descended : But where there shall  
 “ be any Limitation of Lands or Tene-  
 “ ments for Raising or Payment of just  
 “ Debts, or Portions for Children, other  
 “ than the Heir at Law, in pursuance of  
 “ any Marriage Contract or Agreement in  
 “ Writing made before Marriage, the same  
 “ shall be of force ; and any Heir at Law  
 “ liable to pay his Ancestor’s Debt in re-  
 “ gard of any Lands or Tenements de-  
 D 2                      “ scended

" scended to him, who shall alien the same  
 " before Action brought, such Heir shall  
 " be answerable for such Debt, in an Ac-  
 " tion of Debt to the Value of the Land  
 " aliened: In which Case all Creditors  
 " shall be preferred, as in Actions against  
 " Executors; and such Executions shall  
 " be taken out upon any Judgment ob-  
 " tained against such Heir, to the Value of  
 " the Land, as if the same were his own  
 " Debt, saving that the Lands *bond fide*  
 " aliened before Action brought shall not  
 " be liable: And every Devisee made liable  
 " by this Act shall be chargeable in the  
 " same Manner as the Heir at Law, not-  
 " withstanding the Lands devised shall be  
 " aliened before Action brought." This  
 Act is made perpetual by 6 W. 3. cap. 14.  
 and is as to such Bond and Specialty Credi-  
 tors a very good one: But as it seems there-  
 by, that when an Action is commenced  
 against such Heir or Devisee, the Lands so  
 descended or devised, which would have  
 been liable in the Hands of the Heir to the  
 Payment of such Bond and Specialty Debts,  
 cannot be aliened, it would therefore be  
 proper that when such Action is brought,  
 Notice thereof should be registred in the  
 County, where such Lands so liable to such  
 Action as above, if they shall be known,  
 are situated, at such Office as I shall here-  
 after

after recommend, tho' perhaps it may now be known, by searching the Offices in which Writs issuing out of the Courts at *Westminster* are entered, when such Action is commenced, yet not always to a Certainty; without much Trouble and Expence: But of giving proper Notice of Actions which may affect Purchasers and Mortgagees, I shall be the more particular hereafter; and also as to Cases where it shall not be known at the Time of such Actions being brought in what Counties the Lands to be affected by such Actions lie.

The Statute made 29 *Car. 2. cap. 3.* is very useful so far as it reaches, which, in order to prevent Frauds in setting up private parol Agreements with Regard to Estates in Lands and Hereditaments, requires that all Grants, Agreements, &c. to affect Estates in Lands and Hereditaments not being Copyhold or Customary, shall be reduced into Writing; or otherwise they shall only have the Effect of Leases at Will; and all Wills of Lands are to be in Writing, and attested by three credible Witnesses: But this Law does not go quite far enough, for though such Grants, &c. are to be put in Writing, yet such Writing often is and may be concealed or suppressed; therefore in order to prevent Frauds totally, such Writing should be in some Manner discoverable; for  
in

in many Cases there is not much Difference between the Fraud of setting up an Agreement, Grant, Contract, &c. never made, or concealing or suppressing one that has been made.

Land Estates are now conveyed more privately by Lease and Release than they formerly were when Feoffments were generally used, and Assignments and Grants in many Cases were executed upon the Lands conveyed; and for this Reason more Frauds may be used in the Disposition of these Estates; for by Livery and Seisin, and such publick Method of conveying them, every one knew in a great Measure their Owners, and how they were from Time to Time disposed of.

In Purchases made on valuable Consideration by Bargain and Sale, such Bargain and Sale I know is to be inrolled, by the Statute of Inrolments, 27 *H. 8. cap. 16.* 34 & 35 *H. 8. cap. 22.* and 5 *Eliz. cap. 26.* But then there are various Courts wherein they may be inrolled; and such a Bargain and Sale cannot be made to the Use of any one but the Bargainee, for it is always made on valuable Consideration, and must be to the Use of the Person paying such valuable Consideration. Covenants to stand seised to Uses in Consideration of natural Affection, Marriage, &c. need

need not be inrolled; neither are Terms for Years to be inrolled; for these Statutes extend to Bargains and Sales of Freehold and Inheritance only, and not to Terms for Years, &c. so that if this Conveyance was to be always used instead of a Lease and Release, or Feoffment, in such Purchases in which it might properly be used, though it often is not, yet it would not answer the End effectually; it might indeed be of great Service, if all Settlements, Covenants to stand seised to Uses, Deeds, Judgments, &c. of all Kinds concerning Estates in Lands, except Mortgages, for the Reasons hereafter mentioned, were to be inrolled in one certain Court; and if Wills affecting Lands were likewise there to be inrolled in a limited Time after the Death of the Testator; but such particular Office for that End, as I shall hereafter propose to be kept in a particular Part of each County, by proper Persons, to be always resorted to, in which Registries should be made of such Deeds, &c. would be much more convenient and useful.

The Court of Equity, in Concurrence with the Laws above cited, (which I have here shortly mentioned together, in order to shew how far Frauds in the Disposition of Estates are at present, though they are not sufficiently guarded against) does al-

ways, as far as it possibly can, relieve against Frauds to the Detriment of fair Purchasers, Mortgagees and others; but it is impossible always to prevent them in such a Manner as the Laws now are. Purchasers and Mortgagees often run great Risques in dealing about Estates in Land with Persons in Trade liable to Commissions of Bankruptcy, who before they sell or mortgage may perhaps have committed a secret Act of Bankruptcy; and the Commissioners or Assignees, or some of them, thereby become intitled from the Time of such Act committed, to the purchased or mortgaged Estate, in Trust for the Creditors before the Bankruptcy, and do oust such Purchasers, &c. who are only to stand as common Creditors, and to take with the other Creditors *pro rata*, according to the Money by them advanced; and perhaps in Strictness they may not be intitled to a Dividend of the Bankrupt's Estate with such Creditors, as they are in Fact Creditors after the Bankruptcy, which has Relation to, and commences from the Act committed; but admitting they are intitled thereto, they must be still very great Sufferers.

It is highly reasonable that the Estate sold or mortgaged by such Bankrupt should be divided amongst his Creditors; but I think

think far from being so, that Money paid to him for or lent him on the Security of such Estate by Persons not having the least Notice of his having committed any Act of Bankruptcy, (he carrying on Business in his usual Course, and being to all Appearance solvent) or the Produce of such Money, should be likewise shared by them. I know how disagreeable it may be to some, even to attempt to give any Reasons why one Person, though his Case may have every favourable Circumstance attending it, should be more indulged, or better secured in Cases of Bankruptcy, than another, as such Bankruptcy is a kind of a general Loss, in which they will say all Persons who have had any Dealings with the Bankrupt should be equally involved, yet I cannot help thinking it unreasonable that such fair Purchasers and Mortgagees, as I have mentioned, should be deprived of the Estates in Lands and Hereditaments they contracted for, without a Return of the Consideration Money by them fairly advanced: And indeed it often may be a Temptation to Persons liable to Commissions of Bankruptcy to defraud such fair Purchasers, &c. by committing such secret Acts of Bankruptcy, and after such Act committed, selling or mortgaging their Estates in Lands, &c. if the Estate sold

or mortgaged by them, as well as the Consideration Money received, is to be divided amongst the Creditors; for as it advances such Bankrupts Estate, so is it a considerable Advantage to themselves, who are to have so much *per Cent.* according to the Amount and Value of the Estate they shall discover; and that Purchasers and Mortgagees should be liable to such Losses in the Cases I have mentioned, and Persons in Trade have it in their Power thus to defraud, is certainly a Doctrine which wants Amendment.

By 21 *Jac.* 1. *cap.* 19. No Purchasers for good Consideration are to be impeached, unless a Commission of Bankruptcy be sued forth against the Vendor within five Years after he shall become Bankrupt. This is far from rendring these Purchases satisfactory; And who would lay out any considerable Sum of Money with Persons liable to be Bankrupts, without being properly indemnified till five Years were elapsed, as it must be intirely uncertain how long or short a Time before such Purchase made an Act of Bankruptcy had been committed; and how difficult in some Cases, nay, how impossible it is to get such proper Indemnity, every one must be able to judge?

Some

Some Objections may perhaps be made to what I would in this respect Propose; (*viz.* That Purchases and Mortgages made on good Consideration, without Notice of a secret or any Act of Bankruptcy done, should be valid) as that it may be the Foundation of a Scene of Fraud, by giving such Tradesmen an Opportunity before Commissions are taken out against them after private Acts of Bankruptcy committed, to sell or mortgage their Estates in Land, and go away with the Money arising from such Sale or Mortgage, and leave nothing for the Creditors. But by the 5 *Geo. 2. cap. 30.* if they do not Surrender themselves in due time to be examined, and discover their Effects, and deliver the same to the Commissioners; or if they Imbezzil the same to the Value of Twenty Pounds; they are on Conviction to be deemed guilty of Felony, without Benefit of Clergy; and such Felon's Goods and Estate are to go among the Creditors seeking Relief under the Commission: Or it may perhaps be objected, that they will fraudently Convey to Persons secretly for their own Use; and so they may now, by dating the Conveyances before the Bankruptcy, if they have a Mind to defraud their Creditors; but they are punishable for such Fraud by the said Statute of 5 *Geo. 2.* And by the same

Statute, Persons accepting such Trusts, and wilfully concealing the Estate of the Bankrupt, and not within forty Days after the Commission issues, and Notice given in the Gazette, discovering such Trust Estate in Writing to one of the Commissioners or Assignees, and submitting to be examined, if required, are to forfeit One hundred Pounds, and double the Value of the Estate concealed, to the Creditors. The Injuries arising from Frauds by Bankrupts are therefore much more likely to happen to a Purchaser or Mortgagee than to other Persons Creditors of Bankrupts; for an Act of Bankruptcy may be designedly concealed, which the Bankrupt as well as his Creditors may receive some Benefit from, if the fair Purchaser's or Mortgagee's Money, and also the Bankrupt's Estate, sold or mortgaged to them, are to be divided among them, as before limited: For the Laws have already sufficiently guarded in most other Cases against Frauds, which can be committed by Bankrupts, by inflicting very severe Punishments, as abovementioned, on such who do not Surrender themselves, and deliver up their Estates and Effects, or who shall conceal them, or use any kind of Fraud; and also on Persons accepting fraudulent Trusts, and wilfully making Concealments.

In

In the Case of common Creditors, by the same Statute of 5 Geo. 2. where there hath been mutual Credit given, and mutual Debts between the Bankrupt and any other Persons, the Commissioners or Assignees are to state the Account, and one Debt may be set against another, and the Balance of such Account shall be claimed or paid. By a Statute made 19 Geo. 2. c. 33. reciting, " That many Persons within the  
 " Description of, and liable to the Statutes  
 " concerning Bankrupts, frequently com-  
 " mit secret Acts of Bankruptcy unknown  
 " to their Creditors and other Persons  
 " with whom they have Dealings, and  
 " after Committing thereof continue to  
 " appear Publickly, and carry on Business  
 " by buying and selling of Goods, draw-  
 " ing, accepting and negotiating Bills of Ex-  
 " change, and paying and receiving Money  
 " on Account thereof in the usual Way of  
 " Trade, and in the same open Manner as  
 " if they were Solvent, and not become  
 " Bankrupts; and that permitting such  
 " secret Acts of Bankruptcy to defeat Pay-  
 " ments really made in such Cases and  
 " Circumstances, where the Persons recei-  
 " ving the same had no Notice, nor were  
 " privy to their having committed any  
 " Act of Bankruptcy, will be a Discou-  
 " ragement to Trade, and a Prejudice to  
 " Credit

“ Credit in General, It is Enacted, That  
 “ after the 29th of *October* 1746. No real  
 “ Creditor of a Bankrupt, in respect of  
 “ Goods sold, or Bills of Exchange really  
 “ drawn or negotiated, or accepted by such  
 “ Bankrupt in course of Dealing, shall be  
 “ liable to refund to the Assignees of the  
 “ Bankrupt’s Estate any Money, which  
 “ before the suing forth of such Commis-  
 “ sion was really in the Course of Trade,  
 “ received by him of such Bankrupt, be-  
 “ fore he had Knowledge or Notice of his  
 “ becoming a Bankrupt, or being in insol-  
 “ vent Circumstances.” Now I can see,  
 no good Reason why, even after a secret  
 Act of Bankruptcy committed, *bona fide*  
 Purchasers and Mortgagees without Notice  
 thereof, who have paid their Money, which,  
 or the Produce thereof, is to be divided  
 amongst Creditors under a Commission,  
 should not be allowed to retain the Estates  
 in Lands they paid a valuable Consideration  
 for, to Persons having committed such  
 private Acts of Bankruptcy, or be repaid  
 the Money they actually and fairly advanced;  
 for the Case is in short the same:  
 They have advanced a considerable Sum of  
 Money, and received for it Lands, which  
 does not in the Reason of Things differ  
 from what this Act was intended to remedy,  
 That a Person who has sold Goods,  
 &c.

£c. and received the Money for them is not obliged to refund ; for whether Goods are sold for Money which when received may be retained, or whether Money be given for Lands, is within the same Reason ; for it is no more than Exchanging one thing for another in both Cases.

It is therefore requisite that some Alteration should be made in our Laws, for the better Security of Persons dealing with Tradesmen within the Description of the Statutes concerning Bankrupts ; For which Purpose it may be useful, and in a great Degree prevent Losses to Purchasers and Mortgagees, if a fair Purchaser, £c. on valuable Consideration, and without Notice of any Act of Bankruptcy committed, or of the Vendor or Mortgagor's being in insolvent Circumstances, (of the Payment of which Consideration Money, and want of Notice, sufficient Proof should be made, as in Heads of an Act hereto added is directed, or in such other Manner as should be approved of) should be justified in retaining the Estates in Lands so fairly purchased, £c. if what shall have been fully proved to have been paid, and without Notice, shall not be repaid with Interest: And it would likewise be of Service to Creditors, as well as Purchasers and Mortgagees, if Bankrupts selling or mortgaging such Estate,

Estate, after an Act of Bankruptcy willfully and knowingly committed, without discovering the same to a Purchaser, &c. should be severely punished by Imprisonment or otherwise for such Fraud; and which he certainly ought to be as much punished for, as for Concealments, or any thing else he can do with Intent to defraud his Creditors: For, as the Law now stands, the only Method a Purchaser and Mortgagee can take to be safe in Transactions about the Estates of Persons liable to be Bankrupts, is to have a collateral Security from some other Person till such Purchase, &c. is exempted from any Impeachment under a Commission of Bankruptcy, *viz.* for five Years; though it may be very difficult to get such Security; and it would be almost impossible to carry on Business, if this too so reasonable a Caution was always to be used; other Lands cannot be secured by the Seller or Mortgager; for they are likewise, from an Act of Bankruptcy committed, vested in the Commissioners and Assignees, in Trust for Creditors. Indeed you may perhaps be safe, if you can agree not to advance the Money for the Estate you are contracting for, till the five Years are expired, or that it shall be laid out in the Funds, or deposited in some other Manner for such time: But this can seldom

be done, for Tradesmen generally want to use their Money immediately in Trade; it is therefore impossible now to be safe in such Purchases and Mortgages from these Persons, without requiring (what can hardly ever be complied with) a proper Indemnity, which must be a great Hindrance to them and Commerce in general; for they often really and properly want to raise Money on their Estates in Land by Sale, or otherwise, to enable them to carry on their Trade with Effect. Punishing of Bankrupts guilty of fraudulently selling, &c. such their Estates, after an Act of Bankruptcy committed, without discovering the same to a Purchaser, &c. would prevent many of the Injuries, Losses and Inconveniences I have mentioned, which Creditors, Purchasers and Mortgagees are now so liable to.

Where a Person buys Estates in Lands, &c. of, or lends Money on such Security to, any Person who has committed a secret Act of Bankruptcy, and fairly pays his Money without Notice thereof, the Court of Equity will give him all the Indulgence and Assistance it can; but yet often it cannot relieve him, as it may not be in the Power of such Purchaser or Mortgagee by any legal or equitable Means to protect his Purchase or Mortgage: However still,

F

while

Cases Temp.  
Talbot 65  
to 70.

while the Law is dubious in this Point, whether such fair Purchaser, &c. without Notice may be within the Statute of 21 Jac. 1. above mentioned, or not; or whether he may in some Cases, and not in others, it must be a great Dissatisfaction to the Purchaser, &c.

It may be asked, what Security is to be had in Cases of Leasehold and Copyhold Estates against the Frauds I have mentioned? For they may be committed in the Disposition of these Estates, as well as of those of a greater Kind, from Concealments, Suppressions, or Forgeries of Deeds, &c. or prior Incumbrances. The Statutes appointing a Register to be kept in the Counties of *York* and *Middlesex* do not extend to any Copyhold Estates, or to any Leases at a Rack Rent, or to any Lease not exceeding twenty-one Years, where the actual Possession goeth with the Lease; though I can see no reasonable Objection against pursuing the same Method and Rules as in greater Estates; and that it would not be by any Means improper, if every Lease granted for any Term exceeding three Years should be registred, and all Deeds, Assignments, Wills, Judgments, &c. concerning the same, except Mortgages thereof, in the Manner I shall hereafter propose, at least, I think, with Regard

gard to Leasehold Estates, the same Method should be pursued as in *Yorkshire* and *Middlesex*, Mortgages, Assignments of such Leases only excepted. What is done concerning Customary Estates in Manors may be generally known from the Court-Rolls, in which every Admittance, &c. ought to be inrolled. Indeed, the Business done at those Manor Courts is for the most part so publickly managed in Relation to Surrenders and Admittances to Estates on Deaths, Sales, Mortgages, &c. that what is there done it is almost impossible to keep private. Of these Copyhold Estates I shall presently take more particular Notice.

The Method in which I recommend registering Deeds, &c. (for a full Account whereof I refer you to a short Plan of an Act I would propose, and which I have hereto added) will not only be of great Service to prevent the Frauds before mentioned, as it will discover to a Conveyancer concerned for a Purchaser or Mortgagee, and all other Persons, what Deeds, &c. are in Being that may in any wise affect or bind the Estate to be purchased, &c. but will likewise be some Kind of Evidence to re-establish such Deeds, &c. if by any Misfortune of Fire, or otherwise, they should be lost or destroyed after they are so registred; and it is so well known

what Intricacy and Expence often happen after such Losses, to confirm Titles to Estates, that I should imagine this Argument alone would be a sufficient Inducement to make such proposed Alteration in our Laws.

As the Law now stands, in all Purchases and Mortgages of Estates of any considerable Value, on which Fines and Recoveries will operate, I would have, besides the usual Deeds of Lease and Release, or Feoffment, or Bargain and Sale, &c. as the Case may require, a Fine levied, and Recovery suffered to me, or to my Use, of the Estate I purchased, or lent Money upon, (though such Fine and Recovery must be attended with great Expence) for by such Fine and Recovery the Issue of the Persons levying and suffering the same, if they are Tenants in Tail, are immediately barred, except in some particular Grants from the Crown, as above mentioned. If the Persons levying or suffering the same are Tenants in Tail, the Persons intitled in Remainder are barred, except in Cases of executory Devise, &c. as above; and by such Fine and Recovery all Persons intitled to any Estate in Remainder or Reversion will at all Events be barred, if they should not make their Claims within due Time after their Rights accrue, or after

after any Impediments they are under when such Rights accrue be removed, whether the Person levying and suffering the same was only Tenant for Life, Tenant in Tail, or even if he had no Right at all; though how soon or late such Non-claim may happen, and the Title by such Means become clear, must be utterly uncertain; for in many Cases it cannot by any other Means, except a very long Possession under the Statutes of Limitation. There are many Cases, as I have above mentioned, where a Will or Settlement, or other Deed or Instrument, may be concealed, &c. in which neither a Fine or Recovery can be of any Force till after such Non-claim; as where the Persons levying or suffering the same may be mere Tenants for Life; and in that Case such Tenants for Life by levying a Fine of a larger Estate than for their own Lives, or making Feoffments of such larger Estates, and in several other Cases, are liable to Forfeitures; but the Time of Non-claim does not run so as to bar those intitled in Remainder till after the Death of Tenants for Life. As to Forfeitures of such Tenants for Life, see more fully in *Wood's Inst.* 314. But *vide Ca. in Eq. Abr.* 257. where a Mortgagee of an Estate forfeited by a Tenant for Life, by levying

levying a Fine to the Use of himself and his Heirs, to corroborate the Mortgage, notwithstanding such Forfeiture, was relieved against the Person intitled to enter for such Forfeiture; and enjoyed the Lands mortgaged during the Life of such Tenant for Life: Neither can a Fine or Recovery be of any Force till after such Non-claim, where the Persons levying or suffering the same are not intitled to any Estate at all in the Lands therein comprised: And as to Tenants in Tail of Lands of the Gift of the Crown, Remainder in the Crown, a Fine or Recovery levied or suffered by Tenants in Tail do not bar the Issue in Tail; and I doubt whether a Fine with Proclamations levied of such Estate by any Person whomsoever, even in Case of Non-claim, doth bar the Issue in Tail. And in some other Cases where the Estate is not divested or put to a Right, the Title may not be clear even after such Fine and Non-claim: But yet in several Cases a Recovery may be of Use, in which a Fine will not, to bar Remainders in Tail, &c. and is the best Assurance a Purchaser, &c. can now have next to an Act of Parliament; and in some Cases a Fine will operate as in that of Non-claim, where a Recovery will not. It is necessary in all Purchases

chases and Mortgages of great Consequence  
 carefully to search in every proper Office,  
 to know what Fines and Recoveries, Judg-  
 ments, Decrees, Statutes, Recognizances  
 or Instruments whatsoever, which are now  
 discoverable at any Office, are in Being,  
 which may affect the Estate to be contracted  
 for, and likewise diligently to enquire, as  
 much as possibly you can, what Family  
 Settlements, or other Deeds or Wills, have  
 been made concerning such Estate; and in  
 the Purchase Deed I would likewise have  
 the Covenant for Warranty inserted, as  
 it is a real Covenant, and binds Lands  
 descended to the Heir more strongly than  
 any other Covenant; and if the Person I  
 dealt with was not in very good Circum-  
 stances, so that he might beyond doubt be  
 thought sufficient to answer for a Breach of  
 Covenant, if that should happen, I should  
 require a proper and sufficient collateral Se-  
 curity, or that the Purchase Money should  
 be so disposed of, as to remain a Security to  
 me for such Purpose for some considerable  
 Time at least; and I am sure that not one  
 Person in a Thousand will be willing or  
 able to give a Purchaser, &c. such suffi-  
 cient Indemnity: However in all Cases the  
 best Security, which from the Nature of  
 the Case can be had, ought to be required  
 and taken: Indeed some Satisfaction may  
 be

be had from the Honesty as well as reputed Ability of the Person you contract with. The Cautions I have mentioned are some of the best which can now be used, for protecting a Purchaser's or Mortgagee's Title, next to having it established by an Act of Parliament; and even that sometimes may be too privately obtained, without the whole Title being laid before the Parliament, from the Concealment or Suppression of some Deed, Will, &c. and under such Circumstances ought to be repealed; so a Decree in *Chancery* is not any certain Security; for all the Parties concerned or Deeds may not have been before the Court when such Decree was made; therefore such Decree in some Cases ought to be reversed. Yet these Rules, and all others that can at present be laid down, are far from making a Purchaser or Mortgagee so secure as he ought to be; and all this Insecurity and Inconvenience arises from the Want of a proper Method, by which a Purchaser, &c. may know what Deeds, Wills, Judgments, &c. are in Being, concerning the Estates they are dealing about. In the Case of Copyhold Estates, it may be a good Rule to prevent your being imposed on by private Surrenders out of Court to Customary Tenants according to the Custom of most Manors, to be presented at the next Court,

that

that the Purchase or Mortgage Money be somewhere deposited or retained till the next Court after such Purchase or Mortgage be made, which may indeed be sometimes inconvenient; but as the Law now stands, if the Purchaser, &c. would in any degree be safe, it cannot be avoided.

In Cases of Mortgages and other Incumbrances, what is generally taken for Security is very uncertain: The first Mortgagee may perhaps have left in the Hands of the Mortgagor all or part of the Writings belonging to the mortgaged Estate; and this in some Cases may seem necessary, as only part of the Lands therein comprised are to be conveyed as a Security; and other Pretences may sometimes be made by a Mortgagor for his retaining them: And this often deceives a second, or other subsequent Purchaser or Mortgagee; though I think it would be a good Rule never to lend Money on Land Security without the Custody of all the Deeds relating thereto; and is I think what every Mortgagee, as the Law now is, ought to insist upon: And a Mortgagee leaving them in a Mortgagor's Hands, if he should make use of them to defraud any such subsequent Purchaser, &c. ought to lose his Money rather than such subsequent Purchaser or Mortgagee. Of what use is the Mortgage-Deed, with all

the usual Covenants contained therein, even if you have, as the general Custom is, a Bond for performing such Covenants? The following Directions, with what I have said in the above Section, may perhaps be of some Service to Lenders of Money and Purchasers (*viz.*) always to enquire into the Integrity and Ability of the Person you are treating with; to have Fines and Recoveries in Cases where they will operate; and in every Case where you are not satisfied that you are out of Danger, on Account of the Circumstances of the Mortgagor, &c. if he should fail in his Covenants, to have some other collateral Security from such Mortgagor, &c. or from some other substantial Person in manner above recommended; never to lend Money on an Estate of less than double the Value of the Sum lent, and always to have the Custody of the Title Deeds; to annex one Part of the Mortgage to the last Title Deed, with an Indorsement thereon referring to the same; and this should be done whether the Deeds are left in the Mortgagee's or Mortgagor's Hands; and for that Purpose, as seldom as possible, to lend Money on Part, but always on the whole of an Estate; and when it can be done, to get in an Assignment of some old prior Incumbrance, even though satisfied, to protect the Estate  
you

you are buying or lending Money upon ; but this it may often be troublesome to get, and sometimes impossible.

An Oath hath often lately been required from Sellers and Mortgagors (or if *Quakers* an Affirmation) that the Estate to be sold or mortgaged is, to the best of their Knowledge, free from all Incumbrances prior to such Sale or Mortgage, except the usual Charges of Taxes, Quit Rents, &c. And in Truth, according to the present Situation of the Law, it is absolutely necessary, in order to give the Purchaser, &c. some degree of Satisfaction that he may be secure, that such Oath or Affirmation should always be taken ; and a false Oath or Affirmation so taken should be deemed Perjury, within the Statutes of 5 *Eliz. cap. 9.* and 2 *Geo. 2. cap. 25.* If therefore it was only to remove such Temptation to Perjury, the Alteration of the Law, in the Manner I propose, would be highly useful. Oftimes such Oath or Affirmation is not administred or insisted upon, lest requiring it should appear as a Distrust of the Credit and Honesty of the Person you are dealing with : But when you consider, that not only your own Fortune and Welfare are at Stake, but that by such Neglect, in not taking the best Security it was in your Power to have, you are guilty of Injustice

to your Family, who by all the Ties of Nature and Relation claim your watchful Care and Protection.

The above Cautions I know fall yet short of the Certainty which every Purchaser, &c. who pays his Money is intitled to; and the Property of such Purchaser, &c. ought not to be endangered, because it may be disagreeable to a Seller or Mortgagor to comply with reasonable Terms; for though in some Instances, for the Sake of the Credit of Mortgagors, it may not be proper to make publick Mortgages made by them of their Estates, yet in all Cases, as far as possible, they should be prevented from committing Frauds; for the Security therefore of Purchasers and Mortgagees, it is but reasonable that a Person selling an Estate, subject to a prior Incumbrance, or making a second or other subsequent Mortgage, without discovering to the Purchaser or Mortgagee such prior Incumbrance, which he must know of, and must therefore wilfully intend to defraud such Purchaser or Mortgagee, should not only forfeit his Equity of Redemption, but be likewise severely punished, if he did not in a limited Time pay to such subsequent Purchaser or Mortgagee the Money by them advanced, or otherwise satisfy them; and this Punishment I the rather recommend,

mend, as I do not propose, on Account of the Secrecy generally desired in such Transactions, that Mortgages, or such like Incumbrances, should be registred. By the Statute of 13 *Eliz. cap. 5.* 27 *Eliz. cap. 4.* against Conveyances made with an Intent to defraud Creditors and Purchasers, Persons making, and those who are privy thereto, and avowing the same to be true, as above mentioned, are punishable by Imprisonment and Forfeiture: And why should not a Mortgagor, or Seller of any Estate, defrauding a Purchaser or Mortgagee, by making a subsequent Incumbrance, without discovering a prior one, if any there be, to such Purchaser, &c. which is a Fraud of the same mischievous Kind, be punished in the same Manner? And it would be a great Advantage to fair Purchasers, Mortgagees, &c. if a Fine levied to a Purchaser after an Incumbrance made on any Estate, or to a second or other subsequent Mortgagee, should after five Years were elapsed be a Bar to a prior Mortgagee, &c. unless such prior Mortgagee, &c. should before enter, or bring an Ejectment, and prosecute the same effectually. And I have in my Scheme of an Act hereto added recommended a Clause to this Purpose, because for such Term of five Years it might, in some Instances, be possible

possible for Purchasers, &c. to have some collateral Security, though such may not be obtained for a longer or an uncertain Term, perhaps not always for such Term of five Years; and why should not a prior Mortgagee, &c. be barred by Non-claim, after a Fine with Proclamations has been levied five Years, which is a publick Transaction, and may be known by every one, as well as other Persons, who by the Statute of Fines above mentioned are to be barred; for as such Fine is so publickly levied, it must be his own Neglect if he does not claim and pursue his Action in due Time. By this Method a subsequent Purchaser, &c. may in some Degree be safer than they now are, and not the least Injury be done to a first Mortgagee, without his own Negligence, except in the Case of Infancy, Coverture, and such other Impediments as are before mentioned in the Statute of Fines; and in such Cases there should be the same Clause in their Favour as in that Statute.

Copyhold Estates, though called a Base Tenure, ~~are~~ now sold or mortgaged on many Accounts with greater Security than other Estates, though they are subject to some Objections in respect of Fines, Customs, Services, Heriots and Forfeitures; but these are generally allowed for in the Purchase,

Purchase, every Thing concerning these Estates is so publickly transacted; Surrenders and Admittances, whether to the Use of a Will, for without Surrenders for that Purpose, except in a few Cases hereinafter mentioned, they cannot be devised; or on what other Account they are surrendred, or how affected, may be easily known, and they are conveyed much cheaper and easier. Fee-simple Estates would be much preferable if a publick Register, as hereafter proposed, should be approved of, because they are not bound by so many particular Customs, some perhaps good enough, others very inconvenient, nor liable to so many Forfeitures, Fines, &c. and out of them may be more easily raised such Estates as Occasion may require, which in Copyhold cannot be done, but subject to particular Customs and Restrictions, and in some Cases not at all; and as to Timber, Mines, and almost all Improvements, the Owners of such Fee-simple Estates have greatly the Advantage. What I chiefly recommend Copyholds for is, that a Purchaser, &c. dealing about them, may be at present more secure of his Title than in any other Estates, from the publick Manner in which they must generally be conveyed; which was my chief Purpose to shew here, as it is not my Design to enter nicely into all the several Qualities

Qualities of Copyhold Estates compared with others, which would take a Treatise of itself. In some, but few Cases an Interest in Copyholds will pass without a Surrender: The Court of Equity in Case of a Will supplies the Defect of a Surrender for the Benefit of Children, if not to disinherit the eldest Son, and for the Benefit of Creditors, where a Copyhold Estate is charged by the Will with the Payment of Debts, tho' there be no Surrender to these Uses: But Equity will not supply such Defect in favour of a Grandchild or Bastard, or a Wife against the Heir, nor in behalf of Legatees; or if a Surrender should be refused, a Will is good without it; so a *Cestuy que Trust* may devise an Interest in Land, &c. without Surrender; and if Copyhold Lands are in Mortgage, the Mortgagor can dispose of the Equity of Redemption by Will without Surrender made, because he hath at that time no Estate in the Land whereof to make a Surrender; and Surrenders of Copyhold Estates may be, and often are, made out of Court to Customary Tenants to be presented at the next Court for such Purposes, whether for Sales, Mortgages, &c. as the Circumstances of the Owners thereof may require; so that you see in several Instances, even Estates of this kind may be privately disposed

Cases in  
Equity ab.  
122, 124.  
Precedents  
in Chan.

320, 322.  
4 Rep. 25.  
1 Sal. 187.

posed of, and a Purchaser or Mortgagee may be injured from the Concealment, &c. of such Surrenders and Wills; but he is not still so liable to be injured as in buying or lending Money on other Estates; for it must soon be known to him, whether he has bought or lent upon a good Title or no. In other Estates it may be several Years before he can know of the Imposition; and the sooner he knows that his Title is bad, the greater Probability he has of Redress. But such publick Register, as hereafter proposed, would prevent all these Risques. Mortgages, and other Incumbrances of a like Nature, I do not propose by the following Scheme to have registered, as Privacy in such Transactions is generally most Eligible; and having mentioned that in all Cases it would be of Service to register Deeds, &c. in the Manner hereafter proposed, not only as it might discover the real Interest of any Person to the Estate in Lands he should be about to dispose of, but that it might likewise in Case of Loss of Writings by Fire, or other inevitable Accident, be of Use by way of Evidence to re-establish the Title; I would therefore advise in the Case of Mortgages, to prevent the Injuries arising from such Loss, that Counterparts of Mortgages, &c. should be always executed; and that the

H                      Mortgagee

Mortgagee should always keep an attested Copy of his Mortgage Deed in a distinct Place from the Mortgage Deed itself; so that if either the original Mortgage, or such attested Copy should happen to be lost or destroyed, the other, which would in all likelihood be preserved, would be a kind of Evidence in favour of a Mortgagee; and 'tis very improbable that they should both be at the same time lost or destroyed; but if it should so happen, the Counterpart would be of Service, which with some other circumstantial Proof of such Mortgage being subsisting (and that is generally to be had from some Person or other who is made Privy thereto) might be a sufficient Testimony in behalf of the Mortgagee, and annexing the Counterpart of such Mortgage to the Mortgagor's last Title Deed, Will, &c. as herein proposed, may be of Service in this Respect. If it should not be approv'd of to register Deeds, &c. in the Manner herein recommended, it would be proper for all Persons; as well Mortgagors and Mortgagees as others, who have any Estates in Lands, &c. to keep true Copies or Abstracts of their Title Deeds and Receipts, &c. relative thereto, in some Place distinct from the Originals: And even if a Register should be appointed, it would be proper to keep attested Copies or true

Abstracts

Abstracts of such of their Title Deeds as shall not be registered; for I do not propose that any other Deeds, &c. shall be registered than what are for the future to be made or executed, as it might probably create great Confusion in Titles to Land Estates, if Persons were to be at Liberty to register their old Deeds, &c. And it may be necessary, in order to be at as great a Certainty as Possible, against Accidents that may happen to Writings of Mortgagors after they have discharged their Mortgages, that Reconveyances which should always be taken, should be registered as other Deeds, &c. are proposed to be, if the Mortgagor should think proper: However if Registering such Reconveyance should be objected to, I cannot advise a better Method for a Mortgagor to take for his Safety, than that he would deposite in the Hands of some Friend an attested Copy of such Reconveyance; which in most Cases, with Proof of Witnesses who were present at, or made acquainted with, such Reconveyance and Discharge of the Mortgage, would prevent any Injury to a Mortgagor, if he should by such Accident, so lose his Writings.

'Tis the general Practice, when a Purchase is completed, for the Vendor, unless he enters into Warranty (for then he is to keep the Title Deeds to defend the

Title) to deliver to the Vendee all the Title Deeds of the Estate sold ; and the Vendor generally Covenants, that he is seised in Fee of the Estate conveyed, free from Incumbrances, except such as are particularized in the Deed ; and that the Purchaser shall hold the same discharged of all former Incumbrances, and quietly enjoy the same, and for further Assurance ; therefore on such Sale and Conveyance, and Delivery of the Title Deed, tis extremely proper, tho' what is seldom done, for the Seller to have a written Account of what Deeds he delivers over, attested and signed by the Purchaser: And if a Publick Register, as hereafter recommended, was instituted, it would be proper to register such Particular ; for as there is no Register to discover what Title Deeds relating to Estates are in Being, or even if there was such Register, unless such Account itself be registered, if it should happen to be lost, how easy is it for a Purchaser to suppress some Deed very Material, perhaps the only Support of the Title ; and that such Deed was ever delivered, without such Particular as above, in many Instances, it may be impossible for a Vendor or his Representative to give sufficient Evidence of ; and the Purchaser may by such collusive Means weaken the Title, and let in another

other Person to recover the Estate, which it may not be in the Power of the Vendor to prevent, for want of such Deeds so suppressed, as he may never be able to prove that they subsisted and were delivered; and after such fraudulent Suppression, and suffering a Person not intitled to the Estate so collusively to recover it, the Seller, or his Representatives, if they are of Ability, may be sued for Breach of Covenant. In Case of Mortgages, this according to the common Practice seldom can happen; for when Mortgagees take the Title Deeds, they always give a Receipt, particularizing them to be accountable for them; and in such Receipt should be taken Notice of every Thing executed or delivered to the Mortgagee, that at the Discharge of such Mortgage, or Reconveyance of the mortgaged Estate, it may appear whether or no they are all delivered back; and Mortgageors should keep attested Copies of such Receipts in a distinct Place from the Originals, for fear of losing such Originals.

It is likewise proper in all Purchases and Mortgages to require the old Deeds concerning the Estate sold or mortgaged for a considerable Time back, unless a new and good Title thereto be indisputably raised under the modern Deeds, Fines and Non-claim, Length of Possession, as required by the

the Statute of Limitation, or otherwise; for it is possible by a collusive Suppression, Concealment or Loss of an old Conveyance of such Estate, in many Cases intirely to take away the Seller's or Mortgagor's Title; and it may often happen that Estates got by Disseisin, or wrongful Possession, and held without Title, may be imposed upon a Purchaser or Mortgagee; and Purchasers, &c. may be greatly injured by purchasing or lending Money on such bad Titles: For want of such antient Deeds, or other unquestionable Title under those which are to be delivered, it is highly requisite at the Time of the Purchase, &c. to have a Fine with Proclamations levied, and a collateral Security for five Years; and when a Person is seised of an Estate, concerning which he has not any very antient Deeds, nor a modern clear Title there-to under any Fine, or otherwise, it is advisable for him to levy a Fine with Proclamations, in order to establish his Title. The above Inconveniences would seldom or never happen if all Titles were registred; neither would Forgeries so frequently, nor Concealments, nor Suppressions of Deeds, Wills, &c. to the Prejudice not only of fair Purchasers and Mortgagees, but also of Persons intitled to Estates in Remainder, or otherwise; as Grantees, *Cestuy que Trust*,  
*Cestuy*

*Cestuy que Use*, by Devise, &c. who are often injured thereby.

It is not my Intention to treat of the Nature of all the various Tenures of Estates, or to give an Account of the many Resolutions, Determinations and Laws relating thereto, as are to be collected from the Books and Reports of our Lawyers, Statutes and Records, or the different Forms of Deeds used in the Acquisition or Disposition of such Estates, but to shew that Purchasers, Mortgagees, and others intitled under Deeds, Wills, &c. to Estates, as our Laws now stand, may be often injured through Concealments, Suppressions, and Forgery of such Deeds, &c. and the Necessity of an Amendment in such our Laws in this Respect, and to supply, if I could, in some Measure, this Deficiency in them, which I have endeavoured at, by the Observations I have made, and my Scheme of an Act hereto added, and to give some few Rules for the better Security of Purchasers, Mortgagees and others; and I hope such Rules will be of some little Advantage to the above mentioned Persons; for whom they were chiefly intended. I am sensible that Persons guilty of Suppressions and Forgeries, as well as Concealments of Deeds, &c. are punishable, but their Punishment can be no Satisfaction to Persons who

who are to lose their Estates or Money by such Suppression, &c. neither are such Punishments sufficient to guard against the Injuries, which I have shewn such Persons to be liable to thereby, for such Concealments may not be in all Cases wilful; and Suppressions and Forgeries may now be so secret, that in some Instances it may be impossible to discover them; or perhaps such Suppressions or Forgeries may not be known till it may be too late for the Persons injured to have any Relief, perhaps not till after the Death of the Persons guilty thereof, and often not at all. But all these Mischiefs would be intirely prevented, if all Deeds, except Mortgages, &c. were to be registred in the Manner hereafter recommended, and Mortgagors were to be punished for Frauds, as herein mentioned. And I humbly submit what I have here proposed on this Subject, which certainly deserves the most mature Consideration, to the Legislature.

At first, in a Scheme of this extensive Nature, it is not likely that every proper Regulation could be thought of and adjusted, but some must escape Notice; other proper and necessary Clauses will undoubtedly occur to others, and what shall be still wanting may, as, such Defect shall be discovered from Time to Time, be easily supplied. It  
I will

will give me great Pleasure if my Endeavour shall in any Degree answer the desired End; from the Frequency of Misfortunes of this Kind, I have been induced to offer my Thoughts on this Occasion, and thus having so far finished what I designed, I shall now add a short Sketch of such Act, which I have in my above Observations referred to, and recommended, with a few further occasional Remarks interspersed.

It may be intitled, An Act for the better assuring Estates in Lands and Hereditaments, and all Profits thereout, to fair Purchasers, Mortgagees and others, Grantees and Devisees of such Estates, by registering Deeds, &c. concerning them; and may recite that Injuries often happen to Purchasers, Mortgagees, Grantees and Devisees of Estates in Lands and Hereditaments, through Concealments, Suppressions, and Forgeries of Deeds, Wills, Judgments, &c. affecting them, so that the same are often sold and mortgaged without a proper Title thereto in the Seller or Mortgagor thereof, and sometimes subject to former undiscovered Incumbrances; and that several Persons have been unjustly deprived of the Benefit of such Estates, which they have been well intitled to, for want of a publick Register for the Discovery of

such Deeds, &c. and should therefore enact, That from a certain future Time (at the Distance, if it shall be thought proper, of one or two Years, that in the Interim such Objections as shall arise may be considered, and such Additions and Alterations made as may be necessary) in every County in *England* and *Wales* a publick Register should be kept in a particular Part of such County, either in the County Town, or such other Town as shall be thought most convenient to all the Inhabitants thereof, (to be herein specified) in which Register all Deeds, Wills, Judgments, Fines, Recoveries, Recognizances, Statutes, Patents, Assignments, Commissions of Bankruptcy, whether issued or superseded, Gifts, Grants, Records, and all Articles, Agreements and Contracts concerning any Estate in Lands, Advertisements of Hereditaments whatsoever, by which the same shall be bound, affected or charged, or by which they shall be conveyed, except Leases at a Rack Rent, for any Term not exceeding three Years, and Mortgages, unless the Parties should think proper to register them, (either absolutely, or To Uses) should be registered in a short Form; (or more fully at the Option of the Parties) mentioning only the Date, Names, of the Parties, and Lands conveyed and comprized therein, with the Nature of the Deed,

Deed, &c. in order to give Persons concerned thereabout Notice that such Deeds, &c. have been executed and made; which Register should be open at proper Times to be inspected. Fines, Recoveries, Judgments, Recognizances, Statutes, Decrees, particular Grants from the Crown, Commissions of Bankruptcy and Conveyances on Record are now entered and inrolled, and may be searched for and seen at their proper Offices, as likewise are Bargains and Sales in the Counties where the Lands sold lie, or in certain of the King's Courts of Record at *Westminster*; yet if such Fines, &c. as well as Bargains and Sales, were to be registred at such publick Register-Office herein proposed to be kept in the proper County wherein the Lands comprized therein are situated; it would save Purchasers, &c. a great deal of Trouble and Expence: But as such Fines, &c. and Bargains and Sales, are now to be discovered and known at such proper Offices, I do not propose that they shall be invalidated, if not registred, as I do Deeds, Wills, &c. which cannot now be any where discovered. I only recommend this Direction as to Fines, &c. for the Ease of Purchasers, Mortgagees, &c. that the Person taking the Benefit of such Fines, &c. should be obliged to register them within

some limited time after they become of Force; and Persons should be at Liberty to register Receipts for Deeds, Writings, &c. concerning such Estates; and in such Register a Memorial of all such Deeds, Wills, &c. should be registred, or such Deeds, &c. should be of no Force against a subsequent fair Purchaser or Mortgagee for valuable Consideration, if a Memorial of the Deed, &c. under which such subsequent Purchaser or Mortgagee should claim, should be first registred; and every Will or Devise of such Estate, contained in any Memorial so registred, shall be void as to fair and *bona fide* Purchasers and Mortgagees, unless a Memorial of such Will be registred, before a Memorial of the Deed, &c. under which such fair Purchaser or Mortgagee shall claim; and all Persons wilfully preventing, neglecting or hindering the Registring of such Deeds, &c. with Intent to defraud Persons intitled to any Estate thereunder, should be liable to make Satisfaction to Persons injured for want of such Deeds, &c. being registred.

If a Seller or Mortgagor of an Estate, to all Appearance having a good Title to the Estate by him conveyed, and which he would in reality have had, if some Deed or Will, &c. neglected to be registred had not been made and executed; and likewise the

the Persons wilfully preventing, neglecting or hindering, the Registering of such Deeds, &c. with Intent to defraud the Persons intitled to any Estate thereunder, should be all unable to satisfy the Persons injured for want of such Registry, it is much more reasonable, that those who would have been intitled to the Benefit of such Deed, &c. if they had been registred, should lose their respective Interests, rather than fair Purchasers and Mortgagees; and the rather for that such Deeds, &c. which are most likely not to be registred in due time, are voluntary and free Gifts (for Settlements, Purchases and Mortgages, on valuable Consideration, will generally be registred at the Time of their Execution, or very soon after; and it would be very careless Management if they were not so registred) and also the rather for that the Persons intitled to the Benefit of such Deed, &c. are often several in Number, and so the better able to bear the Burthen; or if only one Person should be intitled to the Benefit of such Deed, &c. the Loss would be still easier to him or them, no Consideration having been given for the same, than to a Purchaser or Mortgagee on valuable Consideration: And if a Person should Sell or Mortgage an Estate, which he had no manner of Title to,

to, the Persons to whom any Benefit or Interest is given by any Deed, Will, &c. tho' such should not be registred in due time, would not be prevented from recovering it; and the Purchaser or Mortgagee having so paid their Money on or for an Estate, to which the Seller or Mortgagor had no Title, must look after the Seller or Mortgagor for their Money; for in this Case it would be unreasonable, that Persons intitled under such Deeds, &c. tho' not registred, should be sufferers.

If a Publick Register should be appointed, and Titles registred accordingly, it would in all Cases be impossible for Persons to sell or mortgage any Estate in Lands, unless they were intitled as Heirs at Law to the last Owners, or otherwise intitled by some Deed or Will, &c. executed by such Owner, and registred; for who such last Owner was, or the last Ancestor of such Heir intitled, would be known by such Register. Titles gained by Disseins or wrongful Possession would often be prevented by a Register, as it would make Titles to Estates better known: Neither would Purchasers, &c. be imposed upon by buying such Estates; for by such Register, with the antient Deeds, and other Proof of long Possession, or by subsequent Fines, creating  
after

after Non-claim a new Title, it may be easily known whether such Title was originally wrongfully acquired, and when it is cleared.

There is another Species of Estates which I have scarce yet mentioned, tho' such should likewise be registred; and these are Estates got by Escheats, and the several kinds of Forfeitures; such Forfeiture should within a limited Time be registred, or be of no Force, as, against real Purchasers or Mortgagees on valuable Consideration having no Notice of such Forfeiture; and Persons wilfully concealing it; and selling Estates subject thereto, to defraud Purchasers, &c. should be punished for such Fraud, and liable to make Satisfaction to the Person injured; whether he be the Purchaser or Mortgagee, or the Person to whom such Estate was forfeited; and Recognizances, Statutes, &c. for the Performance or Payment of any thing at a future Day, and which bind the Estates of Cognizers, &c. should in three Months after Forfeiture of such Condition be registred, or be of no Force against subsequent Purchasers; &c. on good Consideration; and Persons concealing such forfeited Recognizances from Purchasers and Mortgagees of Estates liable thereto, or indeed any other Recognizances,

nizances, &c. not forfeited, should be punishable for Fraud, and make Satisfaction to the Party injured, whether he be the Purchaser or Mortgagee, or the Person who was intitled by such Forfeiture to the Estate so Sold, &c. In the Cases of Infants, and Femes Covert, Persons in Prison, out of the Land, or of unsound Mind, they or the Persons intitled under them to the forfeited Estate, should be at Liberty to Register the same, so as to take Advantage thereof, at any Time within three Years after the Impediments they were under shall be removed.

Where Deeds, Wills, &c. are made, taking Notice only in a general Manner of the Lands therein comprised, under the Denomination of all the Lands or Estates of the Person granting or devising them, or in any other general Manner, without Particularising in what Counties, Divisions, or Parishes such Lands lie; as in such Case it may be difficult to discover, or perhaps may not soon be known in what Counties the Estates in Lands or Hereditaments of such Persons are situated; I would therefore propose, that the Persons appointed to keep the Register for the County of *Middlesex*, should keep a distinct Book, in which such Deeds, Grants, Wills, &c.

Granting

Granting or Devising such Estate, in so general a Manner, should be registred; and such Wills should for the greater Ease of Purchasers, &c. be registred in the several and respective Counties in which the Estates therein comprised under such general Words shall lie, as they shall be from time to time discovered; tho' indeed for this, if they are registred in *Middlesex*, there is no great Necessity.

As on Account of Secrecy, Mortgages are not by this Scheme to be registred, I would propose, that if any Person should Sell or Mortgage such Estate, as is above-mentioned, when it is subject and liable to any prior Incumbrance, without discovering the same to such subsequent Purchaser or Mortgagee, he should not only forfeit his Equity of Redemption, but be punished by Fine and long Imprisonment at least, if convicted on Indictment or Information, unless such Seller or Mortgagor should within one Month after Demand made in Writing pay off the Principal and Interest Money to such Purchaser or Mortgagee, or their Representatives intitled thereto, or otherwise satisfy them; and I think in Justice a severer Punishment is due to such Fraud; for it is equal to privately Robbing such Purchaser or Mortgagee of

so much Money; and in Strictness the Punishment should be the same in one Case as in the other: And Sellers and Mortgagors wilfully and knowingly Concealing from a Purchaser, &c. any Deeds, &c. affecting his Title, should be punished for such Fraud by some Fine, even where a Purchaser or Mortgagee shall be satisfied, if by such Fraud they were in danger of losing the Consideration Money advanced by them, (*viz.*) if the Estate conveyed or secured to them was not at the time it was so conveyed and secured, sufficient in Value to pay off the prior Incumbrances thereon, as well as the Money advanced by such subsequent Purchaser or Mortgagee; for in such Case tho' a Purchaser or Mortgagee should be satisfied, I think, in order to prevent all Frauds of this kind, such Seller or Mortgagor not discovering a prior Incumbrance which he knew of, even if he made Satisfaction, should be punished, tho' not so severely as if such Satisfaction should not be made; and Persons concealing and suppressing Deeds, &c. to the Injury of Purchasers, Mortgagees or others, wilfully and knowingly, should be punished in some Manner, if not equally with Persons forging such Deeds, &c. for the Crime is in many Cases

Cases of the same ill Consequence; and Punishments for these Frauds would be proper to be enforced by Law, if a Register should not be thought necessary. And prior Mortgagees not entring, claiming, or bringing Ejectments to recover Possession of the Lands mortgaged to them, within five Years after a Fine with Proclamations levied to a subsequent Purchaser or Mortgagee, should be barred thereby, except Infants, Women Covert, Persons in Prison, out of the Kingdom, or of unsound Mind; and these should have five Years after their Impediments removed to pursue their Claims, as in the Cases of Non-claim under the Statute of Fines above mentioned; and such Entries, Claims or Ejectments, or Notice thereof, should be registred in the County in which the Lands claimed shall lie. The Reason why I propose that Fines only should bar prior Mortgagees, and not Mortgages made by any private Deed or Conveyance, is on Account of the publick Manner in which such Fines with Proclamations are levied, so that a prior Mortgagee not knowing thereof, or neglecting to make his Claim or Entry, or to bring his Action, is very much to be blamed, and certainly ought rather to suffer than a subsequent fair Pur-

chaser, &c. without Notice of such Mortgage; and by this Method subsequent Purchasers, &c. would be in some Degree safe, and not the least Injury be done to a prior Mortgagee without his own Negligence; and Mortgagors or Vendors wilfully concealing from a Purchaser or Mortgagee Actions brought against them for the recovering of Estates they are about to sell or mortgage, should be punished for such Fraud; and such Actions, as well as those commenced against the Heirs and Devisees under the Statute of 3 *W. & M. cap. 14.* should be registred in every County, in which the Person bringing such Action shall know at the Time of such Action brought, that such Heir, &c. has any Estate to be liable to it, or in some one general Office for such Purpose; as for Instance, with the Persons appointed to keep the Register of the County of *Middlesex*, or such other Person as should be approved of.

Mortgagees in all possible Cases should be obliged to keep in their Custody the Title Deeds of the Estate secured to them, and a Breach of the Oath or Affirmation of late usually taken by Sellers and Mortgagors of the Estates in Lands and Hereditaments, that the same are free from Incumbrances,

conbrances, except those particularly mentioned in such Oath or Affirmation, should be punishable as Perjury now is by Law. Perhaps if Mortgagors were obliged to have one Part of their Mortgages executed annexed to the last Deed or Will under which they claim their Title, with an Indorsement on the Back of such Deed, &c. referring to such Mortgage, especially in all Cases where the Title Deeds do not go with the Mortgage, and even where they do, it would be a good Rule, that one Part of the Mortgage should be so annexed; and Disannexing such Deeds, or Erasing or Altering such Indorsement, or Forging such Indorsement with Intent to defraud, should be severely punishable.

Bankrupts should likewise be liable to the same Punishment of Fine and Imprisonment, if convicted in the same Manner as above, in Relation to Sellers and Mortgagors of Estates in Lands, &c. of selling or mortgaging such Estates, after having wilfully and knowingly committed an Act of Bankruptcy, without discovering the same to the Purchaser or Mortgagee; and Sales or Mortgages made to fair Purchasers or Mortgagees on valuable Considerations, without any Notice of such Sellers or Mortgagors having committed any Act of Bank-

Bankruptcy, or being in insolvent Circumstances, should not be impeached; and in order to make such Purchases, &c. valid, Purchasers and Mortgagees should advance their Consideration Money in the Presence of two Witnesses, who should attest the Receipt thereof; and such Purchaser, &c. if living, and thereto lawfully required, should swear, or if a Quaker make his solemn Affirmation, that he had not any Notice of any Act of Bankruptcy committed by the Person who had sold or mortgaged such Estate to him, or of his being in insolvent Circumstances: And if such Purchaser, &c. be dead, then it must lie on the Creditors to prove such Notice was had; and in all Cases, as well as that of Bankruptcy, subsequent Purchasers, &c. should be obliged to pay their Money in the Presence of two Witnesses, who should attest the Receipt thereof; and nothing but Registering a Memorial of a former Incumbrance, Deed, &c. should be equal to a Notice thereof; and Witnesses attesting Receipts of Money falsely should be punishable.

Persons offering false Deeds, Wills, &c. to be registred, and Registers making false Entries, or forging any Register, &c. should be severely punished. The Register,

gister, and his Deputy or Deputies, should be sworn to Secrecy, and the faithful Execution of their Office, as well as find Security for such their Secrecy and faithful Behaviour, and be punishable for Perjury, as the Statutes now in Being against Perjury direct; and the Breach of an Oath or Affirmation in all other Cases, which shall be lawfully required and administered, for the Execution of this proposed Act, either as to Witneffing, Registring Memorials, (which should be done in the same Manner as in the Counties of *York* and *Middlesex*) or for any other Purpose, in which an Oath or Affirmation should be thought proper to be directed, should be punishable in the same Manner. And all Forgeries against the Intent of this Act should be punishable. And the Register should be paid for entring Memorials as in the Counties of *York* and *Middlesex*: And such Register for each County should keep a proper Book, distinguishing each Parish, Township and Place therein, in which he should distinctly and alphabetically enter the Names of the Parties to all Deeds, Judgments, &c. concerning the Estates above mentioned, and register all such Deeds, &c. (except such Leases and Mortgages as aforesaid, if the Registring of such

such should not be approved of): And the Books kept by such Register should be delivered yearly to the *Custos Rotularum*, or to some other proper Person or Persons, or into some proper Place where they may be preserved, and from Time to Time inspected. And the Register of such general publick Register-Office in each County should be appointed by the King, Lord Chancellor, or elected by the substantial Freeholders of the County, as in *Yorkshire*, or in such other Manner as should be best approved of. And such Register, his Deputy or Deputies, should take the Oaths of Allegiance and Supremacy, and receive the Sacrament according to the Church of *England* within three Months after his Election: And for the better Regulation of such Office as to the Forfeiture of the Register, or his Deputy or Deputies, on Misbehaviour, the Method of taking Security, what is to be done on such Register's Death, the Method of registering Memorials, with the Penalties inflicted in order to make such Register and Deputies better answer the End intended, proper Clauses may be taken from the several Statutes of 2 *Ann. cap. 4.* 5 *Ann. cap. 18.* 6 *Ann. cap. 35.* 7 *Ann. cap. 20.* and 8 *Geo. 2. cap. 6.* appointing, and from Time

Time regulating the Registers in the Counties of *York* and *Middlesex*. And most of the different Sections in these Statutes, as they are already drawn, and from experience perfected, would be of Service, and agreeable to the Scheme I have recommended, if put together and reduced into one Act, which may be done without the least Difficulty, from the Statutes themselves, or Mr. *Cay's Abridgment* thereof, under Title *Register*, where they may be seen in a much shorter View. But for a more exact Plan of such Act as is hereby proposed, I would recommend the 8 *Geo. 2. cap. 6.* (which as it is the last, so it is the most compleat of the Kind) having Regard to the other Acts, and such Alterations as are herein pointed out in Relation to registering of Decrees, Patents, Records, Actions, Forfeitures of Estates and Recognizances, Copyhold and Leasehold Interests, Mortgages, Wills, Fines and Bankrupts; and the other Particulars above in this Sketch of an Act mentioned; which Alterations may be enacted by a few additional Clauses; and such Statute of 8 *Geo. 2.* may easily be made conformable thereto. Thus I have thrown together what occurred to me on this Subject, as what I thought might be

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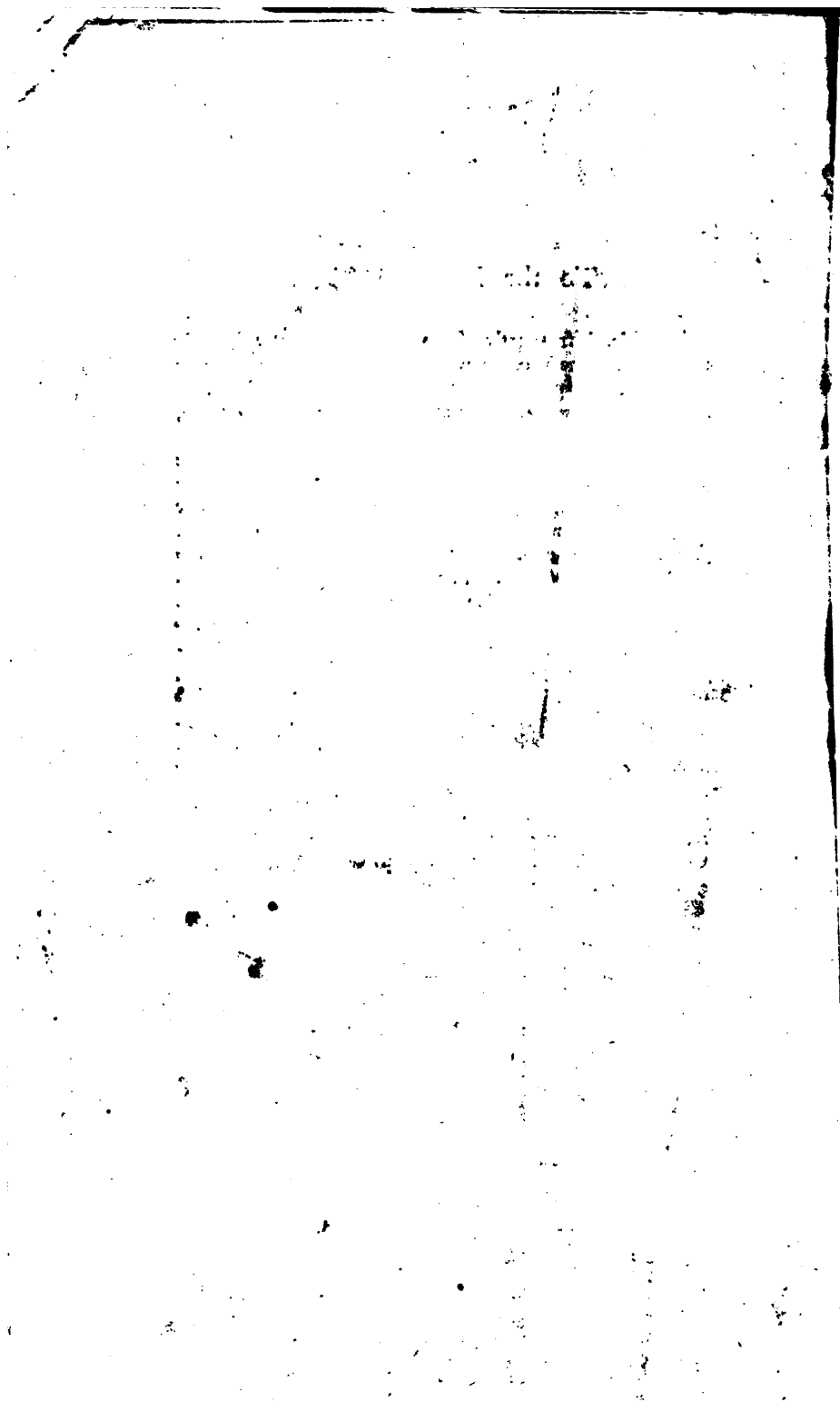
of real Service to Purchasers and Mortgagees of Estates in Lands and Hereditaments, and others, Grantees and Devisees of such Estates; and submit it to such Corrections, Additions and Alterations, as shall be thought proper. If the Parliament should take this so necessary and important Subject into their Consideration, I do not doubt but the Inconveniences above mentioned will in a great Measure be remedied: And to promote such Publick Service was what I have aimed at in Publishing my Thoughts on this Head.

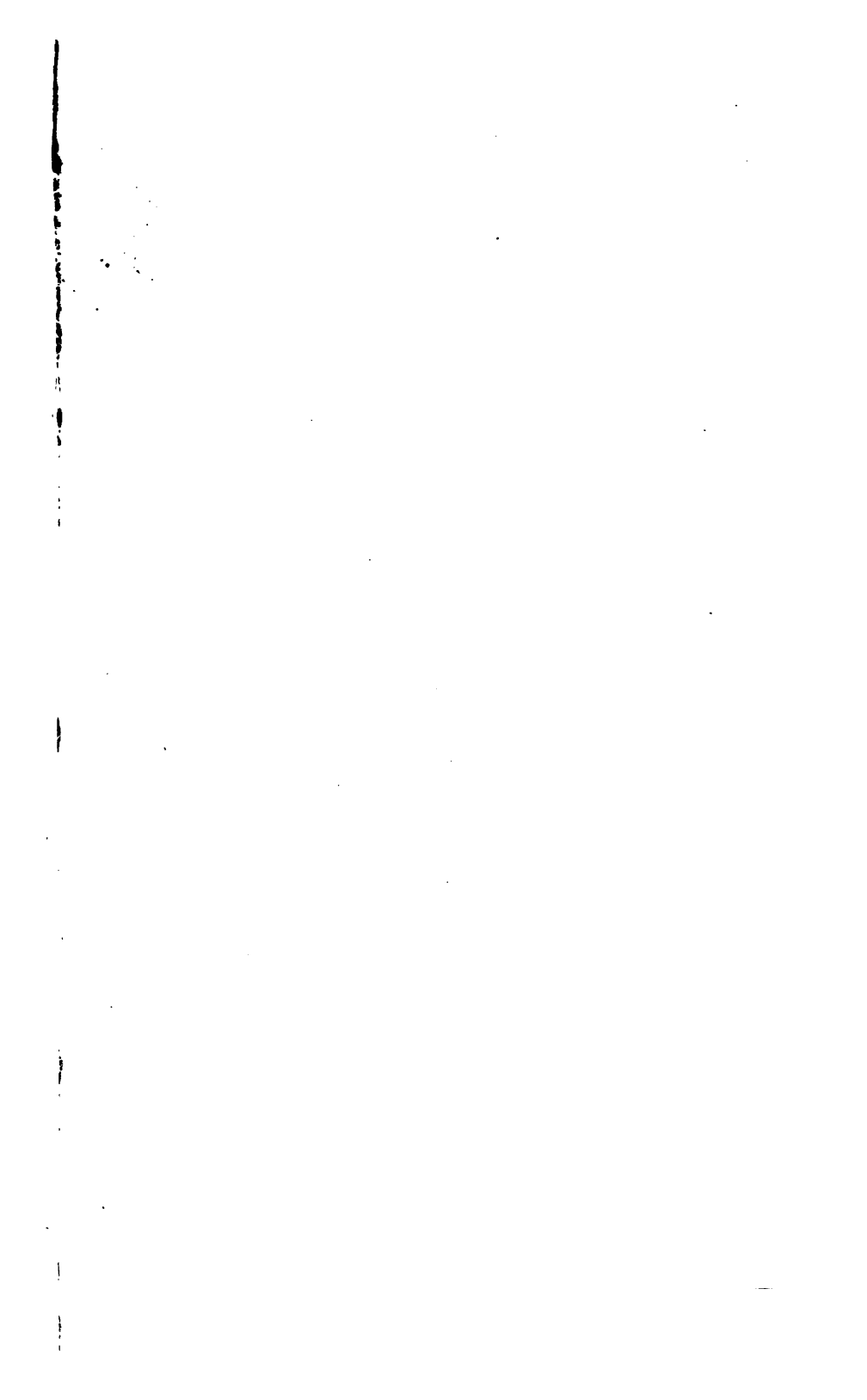
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F I N I S

## To the READER.

The &c. is frequently used herein to prevent a Repetition of the same Words; when it is placed after *Buyer* or *Purchaser*, it signifies *Mortgages*; when after *Seller*, it means *Mortgager*; and when after the Words *Deeds* or *Wills*, it means *all other Dispositions, Instruments or Records affecting Estates in Lands and Hereditaments*; in other Places where it is used it may easily be known what it includes by the Rest of the Sentence in which it is inserted.—— For *Mortgager* all through read *Mortgager*. Page 7. Line 6. after *accrued* put a *full Point*. P. 8. at the Bottom of the Margin dele *Wood's Inst.* P. 24. L. 5. the Word *Purchasers* should begin a fresh Section. L. 16. for *do* read *to*. P. 28. L. 21. for *limited* read *binted*. P. 31. L. 22. read *the Heads*. P. 35. L. 3. for *Mortgages, Assignments*, read *Mortgage Assignments*. P. 42. L. 3. after the Word *Covenants*, read *if the Estate should have been previously mortgaged to the full Value*. P. 46. L. 26. for *is* read *are*. P. 47. L. 17. dele *more*. P. 49. L. 30. dele &c. P. 52. L. 1. after *Title* within the Parenthesis, read *on which Account as it may be dangerous for a Purchaser or Mortgagee to be without the Title Deeds, the Covenant of Warranty may be objected to*, which did not occur to me when I recommended this Covenant in P. 39. P. 57. L. 4. instead of *this Kind* read *of the Kind I have mentioned*.







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